

IN THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF TEXAS FORT WORTH DIVISION

TINA TIETZ and DAVID CARIKER

Plaintiffs,

V.

CAPITAL FUND REIT LLC, et al.

Defendants.

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CASE NO. 4:23-CV-582-P

**FINDING, CONCLUSION, AND RECOMMENDATION OF THE UNITED STATES
MAGISTRATE JUDGE**

Pending before the Court are Defendants Capital Fund REIT, LLC, Capital Fund I, LLC, and Capital Fund II, LLC (collectively the “Capital Fund Defendants”)’ Motion to Dismiss [doc. 17], filed October 13, 2023, and Defendants Jack O’Boyle & Associates, PLLC, Chris Ferguson, and Travis Gray (collectively the “JOA Defendants”)’ Motion to Dismiss [doc. 18], filed October 13, 2023.

Having carefully considered the Capital Fund Defendants’ motion, and noting that Plaintiffs wholly failed to file a response, the Court finds that the motion should be **GRANTED** for the reasons stated therein. Specifically, the Court notes that Plaintiffs have failed to plead at least one essential element of each claim against the Capital Fund Defendants. For example, *inter alia*, Plaintiffs failed to plead: (1) that either of them are a consumer under either the Truth in Lending Act or the Fair Debt Collection Practices Act; (2) which contractual provision was allegedly breached; and (3) that they tendered the amount due on the debt as required for a wrongful foreclosure claim. (*See generally* Plaintiffs’ Amended Complaint (“Complaint”). Further, some of Plaintiffs’ claims are not causes of action recognized in any court. (*See, e.g.*, Complaint at 15 (Stealing/Diluting of Equity)). Additionally, many of Plaintiffs’ claims are supported only by bare and conclusory statements

rather than facts that the Court could liberally construed as sufficient to state a claim. (*See, e.g.*, Complaint at 13–14 (“There is a contract that was breached. The breach is material. The breach leads to direct and/or consequential damages. The breach occurred within the last four years.”); *see also* 15 (providing only that the Capital Fund Defendants “failed to provide many of the Federally required disclosures to [Plaintiffs] at closing.”). Therefore, the Court **RECOMMENDS** that the Capital Fund Defendants’ Motion to Dismiss be **GRANTED**.

Similarly, having carefully considered the JOA Defendants’ motion, and noting that Plaintiffs wholly failed to file a response, the Court finds that the motion should be **GRANTED** for the reasons stated therein. Specifically, the Court notes the JOA Defendants are entitled to qualified immunity because their only interaction with Plaintiffs was through their representation of the Capital Fund Defendants. *See, e.g., Grace v. Everhome Mortg. Co.*, No. 3:13-CV-4563-B, 2014 WL 11515581, at *5 (N.D. Tex. June 16, 2014) (citing *Iqbal v. Bank of Am., N.A.*, No. 13-50218, 2014 WL 1017101, at *2 (5th Cir. 2014)). Additionally, most of Plaintiffs’ allegations against the JOA Defendants are conclusory and legally incorrect. (*See, e.g.*, Complaint at 13 (“Lawyers and attorneys are **NOT licensed** to practice law the nature of lawyer-craft in America as per the United States Supreme Court; the practice of Law CAN NOT be licensed by any state/State.” (mistakes and emphasis in original)). Therefore, the Court **RECOMMENDS** that the JOA Defendants’ Motion to Dismiss be **GRANTED**.

RECOMMENDATION

For the reasons set out above, the Court **RECOMMENDS** that the Capital Fund Defendants’ Motion to Dismiss [doc. 17] be **GRANTED** and the JOA Defendants’ Motion to Dismiss [doc. 18] be **GRANTED**.

ORDER

Under 28 U.S.C. § 636, it is hereby **ORDERED** that each party is granted **until January 11, 2024**, to serve and file written objections to the United States Magistrate Judge's proposed findings, conclusions and recommendation. It is further **ORDERED** that if objections are filed and the opposing party chooses to file a response, the response shall be filed within seven (7) days of the filing date of the objections.

It is further **ORDERED** that the above-styled and numbered action, previously referred to the United States Magistrate Judge for findings, conclusions and recommendation, be and hereby is returned to the docket of the United States District Judge.

SIGNED December 28, 2023.



JEFFREY L. CURETON
UNITED STATES MAGISTRATE JUDGE